IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO. 275 OF 2007
IN
WRIT PETITION NO.3856 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
MARCH 2007.

Heard Shri Paliwal, learned counsel for the petitioners, Shri Dhurve, learned counsel for respondent No.2 - applicant and Shri Kankale, learned AGP for respondents No. 1, 3 & 4.

The present civil application is moved by Respondent No.2 for modification of the order dated 15.12.2006 by which Writ Petition has been disposed of as infructuous. The modification sought is not clarified in the prayer clause but it appears that Respondent No.2 is seeking dismissal of writ petition.

In main writ petition, the challenge was to the order dated 29.6/ 14.7.2006 passed by the State Government dismissing revision filed by the petitioners under Section 154 of the Maharashtra Cooperative Societies Act, 1960. In revision, the

petitioners had challenged the orders of the District Deputy Registrar Cooperative Societies, Bhandara dated 4.6.2001 under Section 78 of the Maharashtra Cooperative Societies Act and further orders dated 28.1.2001 passed by Respondent No.3 – Divisional Joint Registrar, Cooperative Society, Nagpur, in Appeal No.166 of 2001. The petition has been disposed of by observing that the tenure of elected body of the petitioners had already expired and it was an admitted position that fresh elections had already taken place. The observations made under Section 78(1) therefore could not affect the rights of the petitioners in any manner.

By present Civil Application, Respondent No.2 has attempted to point out that no elections have been held after 1999 and it is contended that the petitioners particularly petitioner No.1 has been abusing his position and has been acting to the detriment of the society. It is contended that continuation of the petitioners has been affecting the rights of all members of the society and also the property of the society which is mortgaged with the Maharashtra State Housing Finance Corporation. But in entire application, it has not been mentioned that it was not admitted on 15.12.2006 that the fresh elections had already taken place.

In response to present application for modification, the petitioners have filed their reply and stated that after expiry of tenure the elections have been held in accordance with law. It is stated that initially elections have been held on 2.3.1999, thereafter on 18.2.2002 and lastly on 15.1.2005. The copy of Election Programme is also placed on record and affidavit of Election Officer in support thereof is also filed.

The learned AGP who appears for Respondents No. 1, 3 & 4 has filed affidavit pointing out that the District Deputy Registrar has not received any communication from the society about any elections. However, Respondent No.2 and the other respondents are not in a position to point out any provision in law which requires the petitioners to communicate the proposed elections or completed elections to them.

The learned counsel for respondent No.2 has contended that stand of Election has been taken for the first time before this Court. He states that such elections were not disclosed in earlier round before the State Government.

However, I find that Respondent No.2 is raising a debatable issue. In view of the facts recorded above, I find that the order dated

15.12.2006 passed by me cannot be modified on the basis of such material. However, if Respondent is correct in his stand that no such elections have taken place and the petitioners are usurping the office without any elections, Respondent No.2 can move before the appropriate authority for ventilation of his grievance in this respect and said authority can after verification of facts in the matter, pass appropriate orders in accordance with law.

I, therefore, find that no case is made out for modification. Civil Application is accordingly dismissed.

JUDGE

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